International Brotherhood of Teamsters, Local 443, AFL–CIO (Connecticut Limousine Service, Inc.) *and* Dale E. Peterson. Case 34–CB–1763

October 2, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On August 9, 1994, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party have filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order only to the extent consistent with this decision.

At all times relevant to the complaint, the Respondent and Connecticut Limousine Service, Inc. (the Employer) were parties to a collective-bargaining agreement containing the following union-security provision:[1]

> As a condition of employment, all employees covered by this Agreement shall, after 30 days following the date of execution of this Agreement, or in the case of new regular employees, after 30 days following the date of hiring, become members of the Union in good standing and remain members of the Union in good standing during the term of this Agreement. For purposes of this requirement, good standing is defined as the prompt tender of the periodic monthly dues, administrative dues, and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

On or about July 23, 1993, the Charging Party and 11 other members of the Respondent employed by the Employer and covered by the union-security provision resigned their union memberships. These employees also notified the Respondent that, under *Communications Workers v. Beck*, 487 U.S. 735 (1988), they objected to the Respondent's alleged use of their dues and fees for activities unrelated to collective bargaining, contract administration, or grievance adjustment. The complaint alleges, and the judge found, that the Respondent did not provide these employees with sufficient information in response to their *Beck* objections, and that the Respondent unlawfully charged them for organizing and out-of-unit legal expenditures.

[1] The complaint does not allege that this clause is facially invalid.

I. SUFFICIENCY OF THE INFORMATION PROVIDED TO THE OBJECTORS

A. *The Respondent's Response to the Objections*

After receiving the objectors' resignations, the Respondent, by letter dated August 24, advised the objectors that their dues would be reduced by 4.64 percent. In other words, the Union informed the objectors that they had to pay 95.36 percent of the dues paid by nonobjecting unit employees. The Respondent also provided the objectors with copies of a separate letter describing the Respondent's policy and procedures regarding dues objections. This letter explained that nonmembers of the Union who objected to the payment of full Union dues would be charged a fee ''based on the Union's expenditures for those activities or projects normally or reasonably undertaken by the Union to advance the employment-related interests of the employees it represents.'' The letter further specified that the Respondent considered such ''chargeable'' expenditures to include:

> those for negotiations with Employers enforcing Collective Bargaining Agreements; handling employees' work related problems through the grievance procedure before administrative agencies, or at informal meetings; organizing employees of competing Employers in the Industry; Union governance and administration; litigation related to any of the above, and the cost of economic activities in support of chargeable expenditures.

Thereafter, in response to a letter from the objectors seeking proof of the Union's expenditures, the Respondent furnished them with an accounting prepared by its accountant. The accounting consisted of a breakdown of the Union's expenditures into 13 categories taken from its LM-2 report to the Department of Labor for 1992, together with attachments further breaking down expenditures in 7 of those categories.[2] Expenditures in each category and subcategory were in turn broken down into ''chargeable'' and ''non-chargeable'' amounts. The breakdowns did not, however, specify which of the expenditures had been incurred

[2] The 13 categories into which expenditures were initially broken down were: (1) per capita tax/fees, fines and assessments; (2) expenditures ''to affiliates''; (3) net payroll, officers, and expenses; (4) net payroll, employees and expenses; (5) office and administrative expenses; (6) education and publicity; (7) professional fees; (8) benefits; (9) contributions; (10) ''other expenses''; (11) direct taxes; (12) withholding taxes; and (13) depreciation expenses. The categories of per capita tax, office and administrative expenses, education and publicity, professional fees, benefits, contributions and ''other expenses'' were further broken down in the attached schedules. For example, office and administration expenses were broken down into 17 subcategories, including building maintenance, rent, supplies and printing, postage, and telephone. The category of ''other expenses'' was broken down into 12 subcategories, including stewards expense, strike expense, and severance payments.

specifically in representing employees in the Connecticut Limousine bargaining unit.[3]

B. *Complaint Allegations and the Judge's Decision*

The complaint alleges that the Respondent violated Section 8(b)(1)(A) by failing to provide the objectors with a detailed apportionment of its expenditures for representational and nonrepresentational expenditures for the calendar year 1992, to break down those expenditures on a unit-by-unit basis, and to have the breakdown verified by an independent auditor. The complaint further alleges that the Respondent failed to provide the objectors with an adequate explanation of expenditures for officers' and employees' salaries and expenses and for per capita payments to five administrative components of the Teamsters International Union listed on the separate per capita tax schedule attached to the Respondent's accounting.[4] Finally, the complaint alleges that by failing to provide any explanation of how it spent administrative dues collected from employees, or of any expenditures it may have incurred for political, legislative, or lobbying activities, the Respondent also violated the Act.

The judge found merit in these allegations. In general, the judge faulted the Respondent's accounting for failing, in a sufficiently detailed manner, to break down its representational expenses, to do so by individual bargaining unit, and to have the accounting verified by an independent auditor. In addition, the judge specifically found that the Respondent violated Section 8(b)(1)(A) by failing to show why all of its officers' and employees' wages and expenses are chargeable to objectors; failing to explain why certain per capita taxes detailed in its accounting are chargeable and others are nonchargeable; failing to show what moneys it spent on political, legislative, or lobbying activities; and failing to tell the objectors how it spent the weekly administrative dues referred to in the union-security provision of the parties' collective-bargaining agreement.[5]

The Respondent excepts, arguing that it has provided the objectors with sufficient information to enable them to decide whether to challenge the basis of the agency fee reduction. It also argues that any detail, beyond the information it provided in its accounting that could be derived from its LM-2 report, would have no value to the objectors in evaluating the fee reduction. Respondent contends that each of the specific categories of expenditures in which the judge found the Respondent's disclosure to be deficient are adequately set forth in its accounting, save those categories for which there were no expenses to report. The Respondent also contends that the judge erred in requiring unit-by-unit breakdown and disclosure of representational versus nonrepresentational costs and verification of its accounting by an independent auditor.

We disagree with the judge that the duty of fair representation imposes at least certain of the disclosure obligations with which he found the Respondent did not comply. We therefore reverse the judge's decision to the extent that it is inconsistent with the findings and conclusions set forth below.

C. *Discussion*

1. Major category disclosure

In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board held that the standard by which a union's conduct is measured when it exacts funds from objecting nonmembers under a union-security clause is the duty of fair representation. Id. at 228–230. When a nonmember objects to a union's use of dues or fees for nonrepresentational purposes, the union must reduce the fee so that it reflects representational expenditures only. The union also must apprise the objector of the percentage of the reduction, the basis for the calculation, and that there is a right to challenge the calculation. Id. at 233. To satisfy the duty of fair representation, the information provided to the objector regarding the basis for the calculation of the reduced fee must be ''sufficient . . . to enable objectors to determine whether to challenge'' the calculation. Id. at 239.

Although a union must give objectors sufficient information for them to make a reasonable judgment whether to challenge the union's fee calculation, the union need not, at the prechallenge stage, establish that the figure is justified. That burden is created only if and after the employee files a challenge to that figure. As the U.S. Court of Appeals for the Sixth Circuit observed in *Tierney v. Toledo*, 917 F.2d 927, 935 (6th Cir. 1990):

> Ensuring adequate disclosure to enable a nonmember to object, however, is materially different from determining whether particular expenditures are chargeable or whether the calculations and methodology therefore are acceptable. The latter

[3] During the 1992 calendar year, the Union represented 152 other bargaining units in addition to the bargaining unit at Connecticut Limousine.

[4] These are the Eastern Conference of Teamsters; Teamsters Joint Council #64; New England Bakery Committee; New England Freight Committee; and Building Trades Council.

[5] In his answering brief, the General Counsel suggests that the Respondent's disclosure of certain information to the objecting employees was untimely. Specifically, the General Counsel refers to ''dilatory tactics'' by the Respondent in complying with the employees' requests. The complaint does not specifically allege that the Respondent violated the Act by delays in furnishing the requested information, and there is no exception to the judge's failure to find a violation based on the asserted untimeliness of the Respondent's compliance. Accordingly, we find no violation in this regard.

> questions, to be sure are not presented at this stage of the review. . . . [T]hese issues are for the arbitrator in the first instance once a nonmember has objected to the propriety of the particular agency fee.

See also *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1381 (D.C. Cir. 1995); *Dashiell v. Montgomery County*, 925 F.2d 750, 768 (4th Cir. 1991); *Price v. International Union, UAW*, 927 F.2d 88, 94 (2d Cir. 1991).[6] Therefore, we do not agree with the judge that the Respondent's postobjection disclosure was inadequate because the accounting itself did not establish conclusively how each listed expenditure related to collective bargaining, contract administration, or grievance adjustment.

In *California Saw*, the Board held that a union satisfies its postobjection disclosure obligations to objectors when it provides them with information disclosing the union's ''major categories of expenditures'' and designating which expenditures or portions thereof it deems to be representational and therefore chargeable to them. 320 NLRB at 239. We find that the information provided by the Respondent to the objectors here meets that standard with respect to all major categories of expenditures, save possibly any that may have pertained to the Respondent's use of weekly administrative dues or audit and verification procedures.[7] In response to the objectors' letters, the Respondent sent a financial accounting which designated the expenditures that it had incurred during the previous calendar year and the percentage of each expenditure that it claimed was chargeable. The accounting that the Respondent furnished the objectors, together with the supporting schedules further breaking down its expenditures, is in our view sufficiently detailed to comport with *California Saw's* requirement of ''major category'' information.

With the information they received from the Respondent, the objectors were sufficiently informed to make a decision whether to either accept and pay the reduced fee calculated by the Respondent, or contest the fee in a challenge proceeding ''where the Respondent will bear the burden of proving that [its] expenditures are chargeable to the degree asserted.'' *CWA Local 9403 (Pacific Bell)*, 322 NLRB 142, 144 (1996).[8] We therefore reverse the judge's finding as to this issue and dismiss the allegations relating to the adequacy of the union's explanation of its expenditures, except as to weekly administrative dues.

2. Administrative dues

The complaint alleges that the Respondent failed to inform objectors how it spent weekly administrative dues—a financial obligation that, according to the contractual union-security and dues-checkoff provisions, is collected separately from the regular monthly dues. The judge found that the failure to provide such an explanation violated Section 8(b)(1)(A).

California Saw requires that a union provide information to objectors as to how it spends all periodic dues and initiation fees exacted under a union-security clause that are uniformly required as a condition of acquiring or retaining membership. See *California Saw*, supra, 320 NLRB at 233, 239. However, we cannot determine from the record in this case whether the Respondent has charged employees in the bargaining unit for weekly administrative dues during the relevant accounting period, although the contractual union-security and dues-check provisions imply that it has, and if so: (1) whether it has reduced the administrative dues charged to the objectors by the same percentage that it reduced their regular monthly dues, and (2) whether the expenditures listed in the accounting provided by the Respondent include its expenditures of administrative dues. We therefore find it appropriate to remand this allegation to the judge for further proceedings, including, if necessary, a reopening of the hearing to adduce additional evidence, and for the issuance of a supplemental decision containing findings of fact, conclusion of law, and a recommended supplemental Order. Pending the judge's supplemental decision on remand, we defer consideration of the allegation that the Respondent failed to provide sufficient information to objectors concerning weekly administrative dues.

3. Unit-by-unit disclosure

Under *California Saw*, a union has no duty to either account for its expenditures on a unit-by-unit basis, 320 NLRB at 237, or, as a corollary, to provide unit-by-unit accounting to objectors. Id. at 240, fn. 81. See also *Pacific Bell*, supra. Accordingly, we find that the Respondent did not violate Section 8(b)(1)(A) by failing to break down expenditures to objectors on a unit-by-unit basis.

[6] Although the court in Tierney used the term ''object,'' it is clear from the context that the court was referring to postobjection ''challenges'' to a union's percentage figure. That is, the issue is whether the Union has supplied enough information to permit the objector-employee to ''challenge'' that figure.

[7] As explained in subsections 2 and 4d below, issues pertaining to the information that the Respondent provided objectors concerning weekly administrative dues and audit and verification procedures will be remanded to the administrative law judge.

[8] Contrary to the Respondent's assertion (Br. at 7), we do not view any conduct by the objectors as having already invoked a challenge proceeding.

4. Specific category disclosure

a. *Payroll expenses for officers and employees*

We also reject the judge's findings with respect to the degree of specificity required on the accounting for certain individual categories of expenditures. Indeed, the Supreme Court has recognized that, even under the more exacting strictures of the First Amendment, a ''[U]nion need not provide nonmembers with an exhaustive and detailed list of all its expenditures . . . .'' *Chicago Teachers' Union Local 1 v. Hudson*, 475 U.S. 292, 307, fn. 18 (1986). The General Counsel does not specifically allege that the Respondent has used its payroll expense category to conceal nonchargeable expenditures so as to render it an impermissible ''mixed'' category, i.e., an accounting category containing both chargeable and substantial nonchargeable expenditures. To the extent that the General Counsel's position on this issue can be construed as an attack on the sufficiency of information concerning what he infers to be the Respondent's use of a mixed category, we note that *California Saw* approved the limited use of mixed categories:

> Both the Seventh Circuit in *Gilpin [v. American Federation of Federal, State, and Municipal Employees*, 875 F.2d 1310 (7th Cir. 1989)] and the Fourth Circuit in *Dashiell [v. Montgomery County*, 925 F.2d 750 (4th Cir. 1991)] found the limited use of mixed categories to be permissible under constitutional scrutiny in the public sector context, citing: (1) the impracticality of providing to employees all backup data for such mixed categories; (2) the slight burden imposed on an objector to challenge such mixed categories by merely writing a letter to the union; and (3) the fact that on such challenge the union bears the burden of demonstrating before an independent arbitrator that its calculations with respect to mixed categories are justified. Id. We find these considerations to be equally applicable to the limited use of mixed category expenditures in the NLRA context, and consistent with the central objective of providing objectors with sufficient information to decide whether there is any reason to mount a challenge.

320 NLRB at 240. Thus, to the extent that the Respondent may have made limited use of mixed categories in reporting its payroll expenses for officers and employees, we find that it has not violated the duty of fair representation.

b. *Per capita tax*

With respect to the per capita tax category of expenditures, we find that the Respondent has complied with its disclosure obligations by providing objectors with the breakdown of chargeable and nonchargeable expenditures and attaching a separate schedule explaining the specific organizational unit of the International to which the per capita tax was paid. The Respondent has not only informed the objectors of the amount of expenditures incurred in this major category and the chargeable and nonchargeable allocations, but also, through the schedule attachment, has provided a breakdown sufficient to enable an objector to decide more intelligently whether to challenge those allocations.

c. *''Zero'' categories*

The judge found that a union must affirmatively inform objectors of the fact that no money was spent on political, legislative, and lobbying activities. We disagree. *California Saw's* requirement that objectors be given sufficient information to decide whether there is reason to challenge their union's calculation is satisfied when an employee receives information concerning expenditures and the proportions of those expenditures which are claimed to be representational. When no expenditure is incurred, the union has no reason to report that fact to the objector. The objector can infer from the silence that no money was spent. If the objector disagrees, a challenge can be filed.

d. *Verification*

Finally, the complaint alleges that the Respondent violated Section 8(b)(1)(A) by failing to have the information that it provided to the objectors verified by an independent auditor. On September 23, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in *Ferriso v. NLRB*, No. 96-1321, concerning the type of audit that a union is required to perform to verify information regarding the major categories of expenditures that are furnished to a *Beck* objector. In light of the court's decision, we deem it appropriate to remand this allegation also to the judge for further proceedings, including, if necessary, a reopening of the hearing, to adduce additional evidence concerning the type of audit performed for the Respondent and the verification procedures that were used, and to make the necessary supplemental findings of fact for the Board to resolve the legal issues raised in the D.C. Circuit's decision. Unlike the other remand instructions in this decision, however, we do not request the judge to make supplemental legal recommendations and conclusions of law with respect to this allegation, and we defer resolution of these issues pending the judge's supplemental decision.[9]

II. CHARGEABILITY ISSUES

The judge found that the Respondent charged objectors for organizing expenses and for all of its legal fees

[9] Member Higgins would seek the judge's view on the legal issue.

for calendar year 1992, including out-of-unit legal expenses, and continued to charge for those activities during calendar year 1993. The Respondent's accounting for 1992 shows that $38 was spent on organizing, but that amount represented only the expense of a special printing of campaign literature and did not include salaries and administrative expenses of organizers paid by the Respondent. The parties did stipulate, however, that ''there were indeterminate amounts of time spent by persons employed by the Union in its organizing.'' Total payments made to employees of the Respondent are also reported in the Respondent's LM-2 reports filed with the U.S. Department of Labor during calendar years 1992 and 1993, but without specifying how much, if any, of those payments were for organizing.

The parties also stipulated that, of the $55,714 for professional expenses shown as chargeable on the Respondent's 1992 accounting, $27,950 represented legal and litigation expenses, composed of 11 monthly retainer payments of $2500 and a separate charge of $450 for representing the Respondent in a criminal matter. During 1993, out of $55,756 in professional expenses shown as chargeable, $30,000 were for legal expenses, based on a monthly retainer of $2500. The Respondent did not record its expenditures for legal services on a unit-by-unit basis.

The Board in *California Saw* held that:

> [A] union does not breach its duty of fair representation by charging objecting employees for litigation expenses as long as the expense is for ''services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.'' [(Member Cohen dissenting) (citation omitted) 320 NLRB at 239.]

In accordance with *California Saw*, we find it appropriate to remand the litigation expense issue to the judge to determine whether such fees can be shown to be for ''services that may ultimately inure to the benefit of employees'' in the Connecticut Limousine unit. In making this determination, the judge may, if necessary, order that the hearing be reopened to adduce additional evidence, after which he shall include in his supplemental decision findings of fact, conclusions of law, and provisions in his recommended Order pertaining to this allegation.[10]

[10] Member Higgins does not reach the issue of whether a union can properly charge unit employees for litigation expenses which are incurred outside of the unit, but which are germane to the representation of unit employees. In this regard, he notes that the General Counsel alleged that the Respondent sought dues and fees for ''litigation for nonrepresentational activities.'' Accordingly, he would remand only for a determination of whether litigation expenses were related to nonrepresentational activities. If they were, they would be nonchargeable irrespective of the unit in which they were incurred.

With respect to the issue of the chargeability of organizing expenses, the General Counsel has stated in his brief that ''[d]ue to the importance of this issue, and in order to assist the Board, arguments for both positions are set forth, with the General Counsel supporting a finding that organizing expenses are chargeable.'' Because the judge viewed the Supreme Court's holding in *Ellis v. Railway Clerks*, 466 U.S. 435, 451–453 (1984) that organizing expenses are nonrepresentational under the Railway Labor Act (RLA) as compelling a finding that organizing expenses are likewise nonrepresentational in any circumstances under the NLRA, he found it unnecessary for the parties to develop a record supporting the General Counsel's position.

The General Counsel argues specifically that unions covered by the NLRA expend moneys to organize unrepresented workers in order to preserve uniformity of labor standards in the organized workforce. The General Counsel alludes to empirical economic data supporting his view, but no record evidence has been adduced either on this issue generally or on what kinds of employers, either in the Employer's specific industry or in competing industries, the Union might attempt to organize in order to preserve uniform labor standards. The General Counsel also cites ''significant differences'' between the airline and railway industries covered by the RLA and industries over which the Board asserts jurisdiction, including relative competition among unionized and nonunionized employers vis-a-vis each of the two statutes. On this point also, no record has been developed, specifically with respect to competitive forces within the Employer's industry and comparative circumstances in the transportation industries covered by the RLA.[11] We find it necessary for a full record to be developed on these points, as well as a supplemental briefing by the parties, to address fully the merits of the General Counsel's position.

Our dissenting colleague argues that the Supreme Court has definitively resolved this issue in *Ellis*, and that a remand is therefore inappropriate. We do not agree that the NLRA issue necessarily has been resolved. First, it is clear that the issue of chargeability of organizing expenses under the NLRA was not before the Court in the RLA case of *Ellis*. Second, the procedures under the NLRA differ from those under the RLA. More specifically, the NLRA contemplates that an expert agency (the NLRB) will make judgments based on its experience and its expertise. Our remand to gather data is consistent with this role. Third, the Court recognized in *Beck* that the RLA and public sector cases involve governmental action and

[11] The General Counsel also raised a number of other arguments in which he distinguishes *Ellis* on the basis of the facts of that case, the involvement of ''state action'' under the RLA, and the pertinent legislative history of the RLA.

therefore must be decided under constitutional principles. The Court specifically declined to pass on the question of whether the NLRA cases involve governmental action and whether they therefore must be decided under constitutional principles. Concededly, the Court held that the underlying principle (nonrepresentational expenses cannot be charged to objectors) applies to both the NLRA and the RLA. However, it does not necessarily follow that every sub-issue arising under these Acts must be resolved in precisely the same way.[12]

Our dissenting colleague asserts that we have decided the issue of whether organizing expenses are chargeable under the NLRA. The assertion is incorrect. We have decided only to gather the facts, and to then decide the issue. By contrast, it is our colleague who has decided the issue. In essence, he has decided that, irrespective of the facts that will be gathered on remand, the issue has been decided.

Accordingly, we remand this allegation to the judge for further proceedings, including, if necessary, a reopening of the hearing, to adduce additional evidence and to make supplemental findings of fact, conclusions of law, and a recommended supplemental Order.

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 6:

''6. The Respondent has not violated the Act by:

''(a) Failing to provide objecting financial-core members with a detailed apportionment of its expenditures for representational activities on behalf of the bargaining unit described above for the period January 1, 1992, through December 31, 1992.

''(b) Failing to provide objecting financial-core members with an adequate explanation of per capita tax.

''(c) Failing to provide objecting financial-core members with information concerning the Respondent's political, legislative, or lobbying activities.

''(d) Failing to provide objecting financial-core members with a breakdown of expenses for representational and nonrepresentational activities on a unit-by-unit basis.''

ORDER

The complaint allegations that the Respondent unlawfully failed to provide objecting financial-core members with a detailed apportionment of its expenditures for representational activities, a breakdown of those expenses on a bargaining-unit-by-bargaining-unit basis, and an explanation of its per capita tax and expenses for political, legislative, or lobbying activities, are dismissed.

IT IS FURTHER ORDERED that the complaint allegations pertaining to the chargeability of organizing and legal expenses to *Beck* objectors, pertaining to the adequacy of the verification and auditing proceedures, and pertaining to the information provided those objectors concerning the Respondent's use of weekly administrative dues are remanded to the judge for further proceedings consistent with this Decision and Order.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations to the Board. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

CHAIRMAN GOULD, dissenting in part.

I agree with the judge that the Supreme Court's decision in *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984), compels the finding in the instant case that the Union violated the Act by charging objectors for its organizing costs. Therefore, I disagree with the majority's decision to remand this issue for further consideration.[1]

Ellis held that a union's expenditures for organizing efforts are completely nonchargeable under the Railway Labor Act (RLA). Three reasons were advanced by the Court for its holding, all of which I find equally applicable to cases arising under our Act. First, the Court noted that there was no legislative history to support the notion that, in authorizing union shop clauses under the RLA, Congress intended also to promote a union's organizational agenda aimed at spreading the union's presence to other companies. Second, when employees are covered by a union shop clause the Court observed that ''the relevant unit [is] already organized.'' 466 U.S. at 452. Thus, ''[b]y definition,'' organizational costs can only be ''spent on employees outside the collective-bargaining unit already represented,'' which the Court found ''afford[ed] only the most attenuated benefits to collective bargaining on behalf of the dues payer.'' Id. Finally, the Court noted that the essential justification for the union shop was to eliminate the ''free-rider'' employee ''in the bargaining unit'' who would avoid paying for the representational costs expended on his behalf by the union (id. at 447), and that ''[n]onbargaining unit organizing

[12] In *California Saw*, the Board held that constitutional principles do not apply to *Beck*-NLRA issues, and it decided these issues under the principles of fair representation.

[1] I note that the complaint does not allege that the language of the union-security clause requiring unit employees to become ''members of the Union in good standing'' renders the clause facially invalid. Except to the extent that the court relies upon *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), I agree with the Sixth Circuit's recent decision in *Buzenius v. NLRB*, No. 96-5139 (Sept. 8, 1997), that union-security clauses containing such language are facially invalid.

is not directed at that employee.'' Id at 452. In short, as I stated on an earlier occasion, the dispositive thesis for the Court's holding was that ''dues payments spent for organizing drives are not 'germane' to the union's collective-bargaining responsibilities in the unit and are therefore not within the scope of activities for which Congress intended unions to be relieved of 'free rider' problems.''[2]

Notwithstanding this clear injunction, my colleagues, in remanding the organizing issue, apparently would distinguish *Ellis* and find organizing costs chargeable as a representational expense under our Act if such costs are restricted to business competitors of the employer in the same industry, and if it can be shown that organizing the unrepresented employees would ''preserve uniformity of labor standards in the organized workforce.''[3] I disagree.

Ellis is emphatic that organizing expenses spent ''outside the collective-bargaining unit already represented'' are nonchargeable. This holding necessarily encompasses within the proscription *every* kind of organizing activity, including intra-industry organizing which my colleagues contemplate as permissible. Any doubt as to whether the latter category is nonchargeable is clarified by reference to the decision of the court of appeals in *Ellis*. The Ninth Circuit therein found the union's organizing costs chargeable on the theory that:

> [m]aximum organization of an industry benefits employees and units already organized. A union is considerably strengthened if it eliminates competition from non-union employers and a stronger union is unquestionably a more effective collective bargaining agent. Successful organizing efforts thus can strengthen the union's position at the collective bargaining table immeasurably. [685 F.2d 1065, 1074 (1982). (Emphasis added.)]

The Supreme Court flatly rejected this proposition.

I do not disagree with my colleagues or the Ninth Circuit in *Ellis* that organizing expenses, at least within the same industry in which organized employees work, should be chargeable. In fact, I have indicated as much when I stated that the Supreme Court's decision in *Ellis*

> totally ignores what all observers of labor-management relations have known since the beginning of organized relationships between the two: Unions must organize and recruit new members to protect the gains and standards of those in the bargaining unit. This is especially so when the organizational activities are taking place amongst employers which are direct competitors of the enterprise in which the dues are collected. . . . *See* Gould, supra fn. 1.[4]

But *Ellis* has resolved the issue against us and we are, of course, bound by its holding. As I stated in similar circumstances where I found myself at odds with Supreme Court precedent, the answer is not to manufacture a distinction in applicable law where none exists; rather, ''[i]f there is to be a different result, it must come from the President and the Congress and not the Board.''[5]

[2] Gould, *The Burger Court and Labor Law: The Beat Goes On-Marcato*, 24 San Diego L. Rev. 51, 61 (1987).

[3] My colleagues assert that they have not decided that organizing expenses are chargeable under these circumstances. Implicit in their remand, however, is a determination that, if the specific conditions are met, they will find organizing expenses chargeable. If they intended to follow the *Ellis* prohibition against charging organizing expenses, a remand would not be necessary.

[4] See also Estlund, *Labor Property and Sovereignty After Lechmere*, 46 Stan L. Rev. 305, 327 & 330 n. 154 (1994) (''[T]he presence of a large nonunion sector in the relevant labor market constrains the leverage that organized employees can exert.'' Therefore, in holding that the ''economic benefits that new organizing provides to existing unit members were too attenuated to permit unions to charge objecting nonunion members . . . the Court's decision is incorrect.''); Weiler, *Hard Times for Unions: Challenging Times for Scholars*, 58 U. Chi. L. Rev. 1015, 1029 fn. 43 (1991) (*Ellis* is ''arguably one of the Court's most preposterous labor law decisions'' to the extent that it holds that ''outside organizing efforts [are] not significantly related to the interests of already represented employees''); Henkel & Wood, *Limitations on the Uses of Union Shop Funds After Ellis: What Activities are ''Germane to Collective Bargaining?''* 35 Lab. L. J. 736, 745 (1984) (''It is difficult for the student of labor relations to understand the Court's reasoning in *Ellis* that a union can [not] use dues payments from all employees . . . for union organizing expenses. Unions have fought to organize the nonunion companies in their industry to protect wage levels and jobs of union members. Thus, workers represented by unions have a continuing interest in having nonunion firms organized.'')

[5] *Leslie Homes, Inc.*, 316 NLRB 123, 131 (1995) (Chairman Gould concurring in the Board's finding that the Supreme Court decision in *Lechmere v. NLRB*, 502 U.S. 527 (1992) creates no distinction between organizing activity and area standards activity in determining the access rights of unions to an employer's property).

Ursula L. Haerter, Esq., for the General Counsel.
Norman Zolot, Esq., of Woodbridge, Connecticut, for the Respondent.
John S. Scully, Esq., of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Hartford, Connecticut, on June 19, 1994. The charge was filed January 10, 1994,[1] and an amended charge was filed on February 23, 1994. The Acting Regional Director for Region 34 issued the complaint on February 24, 1994, which alleges that the Respondent, International Broth-

[1] All dates are in 1993 unless otherwise indicated.

erhood of Teamsters, Local 443, AFL–CIO (the Union), violated Section 8((b)(1)(A) of the Act by failing and refusing to provide the Charging Party, Dale S. Peterson, and other employees of Connecticut Limousine Service, Inc. (the Company), who were not members of the Union, with certain information and explanations regarding their obligations to pay dues or fees under a union-security clause in a collective-bargaining agreement, and by seeking from these employees, as a condition of continued employment, dues and fees for nonrepresentational activities. In its timely answer to the complaint, the Union denied these allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and Peterson, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a Connecticut corporation, with an office and place of business in Milford, Connecticut, has been, at all times material to this case, engaged in the interstate and intrastate transportation of passengers. During the 12-month period ending January 31, 1994, the Company, in conducting its transportation business, realized gross revenues in excess of $50,000 for the transportation of passengers from the State of Connecticut directly to points outside of Connecticut. The Union admits the foregoing commerce data. The Union also admits, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union admits, and I find, that International Brotherhood of Teamsters, Local 443, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

At all times material to this case, the Union, by virtue of Section 9(a) of the Act,[2] has been the exclusive collective-bargaining representative of the following unit of the Company's employees:

> All its employees customarily reporting for duty within the jurisdiction of the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

Also, at all times material to this case, the Union's secretary-treasurer, Edward Brereton, was its agent within the meaning of Section 2(13) of the Act.[3]

At all times since May 16, 1990, the Union and the Company have maintained and enforced a collective-bargaining agreement covering the bargaining unit set forth above, and containing the following union-security provision:

> As a condition of employment, all employees covered by this Agreement shall, after 30 days following the date of execution of this Agreement, or in the case of new regular employees, after 30 days following the date of hiring, or in the case of new nonregular employees, after 60 days following the date of hiring, become members of the Union in good standing and remain members of the Union in good standing during the term of this Agreement. For purposes of this requirement, good standing is defined as the prompt tender of the periodic monthly dues, administrative dues, and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

The Union expends the moneys collected under this union-security provision on activities germane to collective-bargaining, contract administration, and grievance adjustment, which are called representational activities. The Union also expends such moneys on activities which are not germane to collective-bargaining, contract administration, and grievance adjustment, which are called nonrepresentational activities.

Since on or about July 23, the Charging Party and the following named employees, who are covered by the quoted union-security provision, have not been members of the Union:

> John Cubelotti, Daniel Nastasia, Augusto Tedesco, Robert J. Kelly, Charles E. Roberts, Salvatore Carchia, Alexander E. Bareska Jr., Robert D'Aniello, William F. Jacques Jr., Louis Massaro and Ronald DeStefano.

On or about the same date, these 12 employees notified the Union that they objected to the payment of dues and fees for nonrepresentational activities. Each of their letters of resignation from membership in the Union also contained the following language asserting their new status:

> Under the U. S. Supreme Court's decision in *Communications Workers of America v. Beck*, I hereby declare myself protected by financial-core status as defined in the aforementioned decision of the U. S. Supreme Court.
>
> Please return any reduced dues owed to me, and charge me for the new appropriate amount in compliance with the requirements of *Beck*.

By letters dated July 30, the Union advised Peterson and the other 11 objectors that their resignations would be effective that same day.[4] The Union's letter also addressed their objections to the payment of dues and fees for ''non bargaining expenses,'' as follows:

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[2] Sec. 9(a) of the Act provides, in pertinent part:
Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective-bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

[3] Sec. 2(13) of the Act provides:
In determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

[4] At the hearing, I accepted the parties' stipulation that the communications between the Union and Peterson for the period from July 1 to the present, are representative of all the communications between the Union and the other 11 objecting employees for the same period.

> Because this is the first request made by a member for a reduction in dues, we are requesting our professional staff to review the 1992 Financial Reports and determine the amount, if any, of such reduction. As soon as we have determined that amount, you will be advised. Any refund due you will be paid with interest as soon as practical. No retroactive payments will be made for any period prior to this date

In a followup letter dated August 24, the Union notified the 12 objectors that it had ''determined that 4.64% of the regular monthly dues is for 'non-chargeable' activities.'' Thus, according to the letter, instead of the regular monthly dues of $22 charged to full union members, the objectors were now obligated to pay $20.98 per month, beginning September.

In a letter addressed to the Company dated August 24, showing that copies of the letter were distributed to the 12 objectors, and captioned ''NON MEMBERS OF LOCAL #443 POLICY ON AGENCY FEE/FAIR SHARE OBJECTIONS,'' the Union explained its new procedure for disposing of objections from financial core members who wish to pay only for union expenditures chargeable to collective bargaining, contract negotiations, and grievance adjustment. The letter presented the following policy regarding the financial obligation of objectors:

> The Financial Core Fee payable by objectors will be based on the Union's expenditures for those activitities or projects normally or reasonably undertaken by the Union to advance the employment-related interests of the employees it represents. These are referred to as ''chargeable'' expenditures. The balance of the expenditures are ''nonchargeable.''

The letter specified that chargeable expenditures included ''those for negotiations with Employers' enforcing Collective Bargaining Agreements; handling employees' work related problems through the grievance procedure, before administrative agencies, or at informal meetings; organizing employees of competing Employers in the Industry; Union governance and administration; litigation related to any of the above, and cost of economic activities in support of chargeable expenditures.'' The Union explained in its letter that 95.36 percent of its expenditures in 1992 were incurred for '''chargeable' activities'' and 4.64 percent for '''non-chargeable' expenditures.'' The Union's letter announced that objectors had the right to challenge the Union's determination of the reduced fee in arbitration.

On September 26, the objectors sent their second objecting letters to the Union. These letters challenged the Union's agency fee and asked for proof of the Union's ''expenditures for chargeable activities.'' The Union answered with a letter and a breakdown of expenditures. In its letter, the Union assured Peterson and the other objectors that its determination of the amount of the agency fee it was charging them ''is correct as required by applicable laws and the NLRB decisions.'' The Union's letter closed with: ''If you have any questions, please state them in writing.''

The breakdown, which the Union's accountant had prepared was an analysis and itemized listing of the Union's expenses for 1992, taken from the Union's LM-2 report to the Department of Labor for calendar year 1992. The accountant's breakdown apportioned these expenses under the headings ''*Chargeable*'' and ''*Non-Chargeable*.'' The breakdown did not specify the portions of its expenses attributable to representing the collective-bargaining unit described above.

The expenses, which the breakdown shows as chargeable, include payroll and expenses for officers and employees, and per capita tax for the International Brotherhood of Teamsters, Eastern Conference of Teamsters, and Teamsters Joint Council #64, New England Bakery Committee, New England Freight Committee and Building Trades Council. However, the Union did not explain why certain payments to these organizations were chargeable and others nonchargeable. Also, the Union's breakdown did not provide any information regarding its political, legislative, and lobbying expenditures.

The total figure of $55,714 for professional expenses shown as chargeable in the Union's breakdown, included $27,950 in legal and litigation expenses incurred by the Union representing various bargaining units in 1992. This latter figure is comprised of 11 monthly retainer payments of $2500 and a separate charge of $450 for representing the Union in a criminal matter. During the 1992 calendar year, the Union represented 153 collective-bargaining units, with an average compliment of 3260 employees throughout the year.[5]

In calendar year 1993, the Union spent approximately $54,756 in professional fees, which included approximately $30,000 in total legal expenses for the Union in representing various units based upon a retainer of $2500 per month for 12 months. During the 1993 calendar year, the Union represented approximately 95 collective-bargaining units with an average total compliment of 3338 employees throughout the year.

The collective-bargaining unit at the Company is one of the units which the Union represented in calendar year 1992, when there was an average of approximately 141 employees in the unit, and in 1993, when there was an average of approximately 152 employees in the unit. However, I find, from testimony of its secretary-treasurer, Anthony Buonpane, that the Union's allocation of chargeable and nonchargeable expenses reflected the costs of collective bargaining, contract administration, and grievance adjustments for all of its members. The parties stipulated, and I find, that the Union does not maintain separate records by its representatives or by units represented for the organizing activities or the expenses of the Union.

The Union attempted to organize unrepresented employees in 1992 and 1993. Its breakdown reflects $38 as an organizing expense for 1992, which was chargeable. The parties stipulated, and I find, that the Union used this money for a special printing of campaign literature, and that there were indeterminate amounts for time spent by persons employed by the Union in its organizing.

The parties also stipulated to the following facts: The payments made to persons employed by the Union during fiscal years 1992 and 1993, are set forth in the copies of the Union's LM-2 reports filed with the U.S. Department of Labor, which I received in evidence. All the collective-bargaining units represented by the Union in 1992 and 1993

[5] The parties' stipulations provided the data, including payments to the Union's employees, which I have recited, in this and subsequent paragraphs, for calendar 1992 and 1993.

were serviced by persons employed by the Union. The Company unit was primarily serviced by Edward Brereton, assisted by a Union business agent, Robert Byusik, in 1992 through Brereton's death in November 1993 and thereafter primarily serviced by Bayusik. The Union's fiscal year is coextensive with the calendar year.

At all times material to this case, the union-security provision covering the Company's employees required them to pay weekly administrative dues. However, the Union did not explain its use of those dues to the objectors.

B. *The Issues Raised by the Pleadings*

The General Counsel contends that the Union violated Section 8(b)(1)(A) of the Act by:

1. Failing to disclose sufficient information to the objectors in a timely manner.
2. Failing to provide a unit-by-unit allocation of expenses to the objectors.
3. Charging objectors for nonunit litigation expenses.
4. Failing to include and explain certain expenditures in the breakdown of expenditures, which it issued to the objectors.

In her brief, counsel for the General Counsel questions whether the Union's organizing expenses are chargeable to the objectors. Counsel argues both sides of the question and states that the General Counsel's view is that such expenses are chargeable to the objectors, and thus their inclusion in the dues charged to objectors is lawful. However, the complaint alleges that the Union violated Section 8(b)(1)(A) of the Act, by requiring objectors to pay for organizing employees.

C. *Analysis and Conclusions*

Under Section 7 of the Act, Dale S. Peterson and the other 11 objectors had a right to refrain from full membership in the Union. However, Section 8(a)(3) of the Act limited that right by authorizing employers and unions to enter into agreements which ''require as a condition of employment membership [in the union] on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which ever is the later.'' In their respective letters of resignation, each of the 12 objectors told the Union to express in dollars and cents the extent of that limitation upon his right to refrain from providing it with financial support, and to charge him as little as the applicable law required him to pay. The question raised by the pleadings is whether the Union's response impaired the objectors' Section 7 right to refuse to provide financial assistance for union activities which had nothing to do with their wages, hours, and conditions of employment.

In dealing with the contention that the Union's treatment of the 12 objectors ran afoul of Section 8(b)(1)(A) of the Act, I look first to the teachings of *Communication Workers of America v. Beck*, 487 U.S. 735 (1988) There the Court expanded its prior holding in *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963), that under Section 8(a)(3) of the Act, ''the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues.'' Accord: *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031, 1035 (1993). In *Beck*, the Court held that under Section 8(a)(3) of the Act, ''financial core'' union members—those who pay dues as a requirement of employment, but do not choose to join the union—cannot be required to pay more than ''those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.''' 487 U.S. at 762–763, quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984). Specifically, the Court in *Beck* held that financial core membership does not include ''the obligation to support union activities beyond those germane to collective bargaining, contract administration and grievance adjustment.'' 487 U.S. at 745. Further, this obligation is limited to the expenses which the Union incurs in representing the financial core member's bargaining unit. 487 U.S. at 762–763, citing *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984).

Under Board policy, the Union, as the exclusive bargaining representative of the Company's employees, had a fiduciary duty of fair dealing requiring it to advise Peterson and all other members of the collective-bargaining unit, including financial core members, ''not just those who are faced with imminent discharge, as to the precise extent of their obligations and rights'' with respect to their financial burden under the current union-security provisions. *Electrical Workers IUE Local 444 (Paramax Systems)*, supra at 1038–1040. The Board has recognized that: ''The rationale for requiring the union to provide this information is that it, as the exclusive representative, must ensure that unit employees do not fail to meet their obligations through 'ignorance or inadvertence,' but do so only as a result of conscious choice.'' Id. at 1039. [Citation omitted.]

The Union's obligation here, as exclusive representative, includes the duty to provide Peterson and the other objectors in the collective-bargaining unit, who are thus entitled to object to the Union's calculation of financial core dues, with ''sufficient information to gauge the propriety of the Union's fee.'' *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 306 (1986). Accord: *Tierney v. City of Toledo*, 824 F.2d 1497, 1503 (6th Cir. 1987). The Court noted in *Hudson* that ''absolute precision'' cannot be ''expected or required,'' but, the information must inform the employee of the major categories of expenses, whether the union considers each category of expense to be representational or nonrepresentational, the total sum of expenditures, and the percentages thereof that were representational and nonrepresentational. *Hudson*, above at 307 fn. 18. Accord: *Tierney v. City of Toledo*, supra at 1503.

''The test of adequacy of the initial explanation to be provided by the [U]nion [to financial core members] is whether the information is sufficient to enable the employee to decide whether to object.'' *Dashiell v. Montgomery County, Md.*, 925 F.2d 750, 756 (4th Cir. 1991). If the employee objects to the fee, the Union, then has the burden of showing in detail how it arrived at the amount in question. Id. The Union also must ''provide for a reasonably prompt decision by an impartial decision-maker'' and, when an objector challenges the Union's calculation of amount of dues chargeable for representational activity, the Union must hold the objector's dues payment in escrow pending disposition of the challenge. *Hudson*, supra at 307–308.

Applying the teachings of *Beck*, *Ellis*, *Paramax*, and the other cases cited above, I find that the Union did not carry out its fiduciary duty to apprise the objectors in sufficient detail to enable them to challenge the Union's calculations. For, the Union did not give them a breakdown showing the expenses attributable to its ''dealing with the [company] on labor-management issues.'' *Ellis*, 466 U.S. at 448. Accord: *Beck*, 487 U.S. at 762–763. Further, the Union's statement of policy and the breakdown, which it furnished on September 28, showed that in calculating the dues for the objectors it had included costs attributed to negotiations, its expenses for organizing, union governance and adminstration, and other activities performed for all of the bargaining units it represented in 1992. Nowhere was there any breakdown of these costs by bargaining unit. Further, the Union does not maintain records on a unit-by-unit basis. Secretary-Treasurer Buonpane testified that the Union's allocation of chargeable and nonchargeable costs covers all the units it represents. Thus, the Union's statement of policy, its breakdown, its office practice, and the testimony of its secretary-treasurer, show that it has totally ignored its obligation under *Beck* to show objecting financial core members chargeable costs attributable to their bargaining unit. By this dereliction, the Union has violated Section 8(b)(1)(A) of the Act.

In *Beck*, 487 U.S. at 745, the Court held that financial core membership did not include ''the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.'' In *Ellis*, 466 U.S. at 451–453, the Court held that a union's organizing expenses cannot be charged to objecting financial core members as a bargaining expense. Also, in *Ellis*, Id. at 453, the Court recognized that ''[t]he expenses of litigation incident to negotiating and administering the contract or to settling grievances and disputes arising in the bargaining unit are clearly chargeable to [objecting financial core members] as a normal incident of the duties of the exclusive representative.'' The Court also held in *Ellis*, Ibid, that: ''The expenses of litigation not having such a connection with the bargaining unit are not to be charged to objecting employees.''

In the instant case. the Union's statement of policy and its financial disclosures show that it was including organizing expenses and legal fees in the dues it charged to the 12 objectors. In adding the legal fees to the chargeable expenses, the Union made no effort to relate them to its duties as their exclusive bargaining representative. The Union's secretary-treasurer, Anthony Buonpane, testified that its organizing costs were chargeable to the objectors because they would benefit from organizing the unorganized employees elsewhere. However, the Court in *Ellis*, 466 U.S. at 451–453, specifically rejected that assertion. I find, therefore, that by charging the objectors for organizing expenses and for all of its legal fees, the Union exceeded the bounds set by *Beck* and *Ellis*, and thereby violated Section 8(b)(1)(A) of the Act.

I also find that the Union violated Section 8(b)(1)(A) of the Act when it neglected to inform the objectors in other important respects. Thus, the Union never told them how it spent the administrative dues referred to in the union-security provision covering the bargaining unit. Nor did the Union show why all of its officers' and employees' wages and expenses are chargeable to the bargaining unit. Similarly, the Union did not explain why certain of the per capita taxes, shown on its financial report for 1992, are chargeable and other per capita taxes are nonchargeable. The Union has not shown what if any moneys it spent on political, legislative, or lobbying activities. Assuming that its spent no money on those activities, fairness required that it so advise the objectors. Finally, the Union neglected its duty to provide the objectors with an independent audit. *Hudson*, supra, 475 U.S. at 307 fn. 18. The Union's accountant did not perform an independent audit of the Union's expenditures for 1992 or 1993. Instead it presented the figures in the Union's report to the Department of Labor for 1992.

CONCLUSIONS OF LAW

1. The Union, International Brotherhood of Teamsters, Local 443, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

2. The Company, Connecticut Limousine Service, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is, and has been at all times material to this case, the exclusive collective-bargaining representative of the following appropriate unit of the Company's employees:

> All its employees customarily reporting for duty within the jurisdiction of the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

4. At all times material, since July 23, 1993, the following employees employed in the unit described have not been members of the Union:

> Dale S. Peterson, John Cubelotti, Daniel Nastasia, Augusto Tedesco, Robert J. Kelly, Charles E. Roberts, Salvatore Carchia, Alexander E. Bareska Jr., Robert D'Aniello, William F. Jacques Jr., Louis Massaro, and Ronald DeStefano.

5. At all times material, since May 16, 1990, the Union and the Company have maintained and enforced a collective-bargaining agreement covering the unit described above, and containing the following union-security provision.

> As a condition of employment, all employees covered by this Agreement shall, after 30 days following the date of execution of this Agreement, or in the case of new regular employees, after 30 days following the date of hiring, or in the case of new nonregular employees, after 60 days following the date of hiring, become members of the Union in good standing and remain members of the Union in good standing during the term of this Agreement. For purposes of this requirement, good standing is defined as the prompt tender of the periodic monthly dues, administrative dues, and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

6. The Union has violated Section 8(b)(1)(A) of the Act by:

(a) Failing to provide the 12 employees named above with a detailed apportionment of, and an independent audit of, its

expenditures for representational activities on behalf of the bargaining unit described above for the period January 1, 1992 through December 31, 1992.

(b) Failing to provide the 12 employees named above with an adequate explanation of the following expenditures, which the Union claims are for representational activities affecting the bargaining unit described above:

> administrative dues, payroll and expenses for officers and employees, and per capita tax for the following: International Brotherhood of Teamsters, Eastern Conference of Teamsters, Joint Council # 64, New England Bakery Committee, New England Freight Committee and Building Trades Council.

(c) Failing to provide the 12 employees named above with any explanation as to its expenses for political, legislative, or lobbying activities affecting the bargaining unit described above.

(d) Including its expenses for organizing employees and litigation for nonrepresentational activities in calculating the dues and fees to be charged to the 12 employees named above.

(e) Failing to provide the 12 employees named above with verification that the information concerning its expenditures for representational and nonrepresentational activities were independently audited.

(f) Failing to provide the 12 employees named above with a breakdown of expenses for representational and nonrepresentational activities on a unit-by-unit basis.

7. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union has violated Section 8(b)(1)(A) of the Act, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Union is required to provide the 12 objectors, and any other unit employee, who has become an objector, with a detailed apportionment of its expenditures for representational and nonrepresentational activities in the bargaining unit set forth above, for the calendar years from January 1, 1992, to the present. Further, the Union is required to provide all objectors in the bargaining unit with an adequate explanation of its expenditures for political, legislative or lobbying activities, administrative dues, payroll and expenses for officers and employees, and per capita tax for International Brotherhood of Teamsters, Eastern Conference of Teamsters, Teamsters Joint Council #64, New England Bakery Committee, New England Freight Committee and Building Trades Council. The Union shall also be required to recalculate the amounts of dues chargeable to objectors for calendar years from January 1, 1992, to the present, by excluding all expenditures for organizing and litigation for nonrepresentational activities involving the bargaining unit described above, and to provide verification to the objectors that the information regarding its expenditures for representational activities and nonrepresentational activities were independently audited. Upon completion of the recalculations, the Union will be required to make whole the 12 objectors named above, and all other objectors in the bargaining unit, by refunding to them all the excess dues and fees they may have paid to the Union under the current union-security provision, with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Union, International Brotherhood of Teamsters, Local 443, AFL–CIO, New Haven, Connecticut, its officers, agents, successors, and representatives, shall

1. Cease and desist from

(a) Failing to provide objecting financial core members included in the following collective-bargaining unit with a detailed apportionment of, and an independent audit of, its expenditures for representational activities on behalf of that bargaining unit for the calendar years from January 1, 1992, to the present:

> All of Connecticut Limousine Service, Inc.'s employees customarily reporting for duty within the jurisdiction of the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

(b) Failing to provide objecting financial core members with an adequate explanation of the following expenditures which the Union claims are for representational activities affecting the bargaining unit described above:

> administrative dues, payroll and expenses for officers and employees, and per capita tax for the following: International Brotherhood of Teamsters, Eastern Conference of Teamsters, Joint Council # 64, New England Bakery Committee, New England Freight Committee and Building Trades Council.

(c) Failing to provide objecting financial core members, in the above-described collective-bargaining unit, with an explanation as to the expenses for political, legislative, or lobbying activities, which the Union deems chargeable as representational activities on behalf of those members.

(d) Including the expenses for organizing employees and litigation for nonrepresentational activities in calculating the dues and fees to be charged to objecting financial core members in the above-described collective-bargaining unit.

(e) Failing to provide objecting financial core members, in the above-described collective-bargaining unit, with verification that the information concerning its expenditures for representational and nonrepresentational activities were independently audited.

(f) Failing to provide objecting financial core members, in the above-described collective-bargaining unit, with a break-

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

down of expenses for representational and nonrepresentational activities on a unit-by-unit basis.

(g) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Dale S. Peterson, John Cubelotti, Daniel Nastasia, Augusto Tedesco, Robert J. Kelly, Charles E. Roberts, Salvatore Carchia, Alexander E. Bareska Jr., Robert D'Aniello, William F. Jaques Jr., Louis Massaro, Ronald DeStefano, and all other objecting financial core members included in the following bargaining unit, with a detailed apportionment of, and an independent audit of, its expenditures for representational activities on behalf of that bargaining unit for the calendar years from January 1, 1992, to the present:

> All of Connecticut Limousine Service, Inc.'s employees customarily reporting for duty within the jurisdiction of the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees, and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

(b) Provide the 12 objecting financial core members named above, and all other objecting financial core members included in the bargaining unit described above, with an adequate explanation of the following expenditures, which the Union claims are for representational activities affecting the bargaining unit described above:

> administrative dues, payroll and expenses for officers and employees, and per capita tax for the following: International Brotherhood of Teamsters, Eastern Conference of Teamsters, Joint Council # 64, New England Bakery Committee, New England Freight Committee and Building Trades Council.

(c) Provide the 12 objecting financial core members named above, and all other objecting core members included in the bargaining unit described above, with an explanation as to the expenses for political, legislative, or lobbying activities, which the Union deems chargeable as representational activities on behalf of those members for the calendar years 1992 to the present.

(d) Provide the 12 objecting financial core members named above, and all other objecting financial core members included in the bargaining unit described above, with verification that the information presented to them concerning the Union's expenditures for representational and nonrepresentational activities, for calendar years 1992 to the present, have been independently audited.

(e) Provide the 12 objecting financial core members named above, and all other objecting financial core members included in the above-described collective-bargaining unit, with a recalculation of dues chargeable to them for calendar years 1992 to the present which excludes all expenses associated with litigation of nonrepresentational activities, organizing and all other nonrepresentational expenditures, and includes only representational expenditures broken down on a unit-by-unit basis.

(f) Make whole the 12 objecting financial core members named above, and all other objecting financial core members in the above-described collective-bargaining unit, for any excess dues and fees they may have paid to the Union, since becoming, and notifying the Union that they were, objecting financial core members, by refunding the excess to them with interest as provided in the remedy section of this decision.

(g) Post at its union office, in New Haven, Connecticut, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 34 after being signed by the Union's authorized representative, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Sign and return to the Regional Director sufficient copies of the notice for posting by Connecticut Limousine Service, Inc., if willing, at all places where notices to employees are cusomarily posted.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide objecting financial core members included in the following collective-bargaining unit with a detailed apportionment of, and an independent audit of, the Union's expenditures for representational activities on behalf of this bargaining unit for the calendar years from January 1, 1992, to the present:

> All of Connecticut Limousine Service, Inc.'s employees customarily reporting for duty within the jurisdiction of

the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

WE WILL NOT fail and refuse to provide objecting financial core members with an adequate explanation of the following expenditures which the Union claims are for representational activities affecting the bargaining unit described above:

administrative dues, payroll and expenses for officers and employees, and per capita tax for the following: International Brotherhood of Teamsters, Eastern Conference of Teamsters, Joint Council # 64, New England Bakery Committee, New England Freight Committee and Building Trades Council.

WE WILL NOT fail and refuse to provide objecting financial core members, in the above-described collective-bargaining unit, with an explanation as to the expenses for political, legislative or lobbying activities, which the Union deems chargeable as representational activities on behalf of those members.

WE WILL NOT include expenses for organizing employees and litigation for nonrepresentational activities in calculating the dues and fees to be charged to objecting financial core members in the above-described collective-bargaining unit.

WE WILL NOT fail to provide objecting financial core members with verification that the information which we have tendered to them, concerning the Union's expenditures for representational and nonrepresentational activities, on behalf of the above-described collective-bargaining unit, was independently audited.

WE WILL NOT fail to provide objecting financial core members in the above-described collective-bargaining unit, with a breakdown of expenses for representational and nonrepresentational activities, on a unit-by-unit basis.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Dale S. Peterson, John Cubelotti, Daniel Nastasia, Augusto Tedesco, Robert J. Kelly, Charles E. Roberts, Salvatore Carchia, Alexander E. Bareska Jr., Robert D'Aniello, William F. Jaques Jr., Louis Massaro, Ronald DeStefano, and all other objecting financial core members included in the following bargaining unit, with a detailed apportionment of, and an independent audit of, the Union's expenditures for representational activities on behalf of this bargaining unit for the calendar years from January 1, 1992, to the present:

All of Connecticut Limousine Service, Inc.'s employees customarily reporting for duty within the jurisdiction of the Union and performing driving duties, excluding all office, clerical, sales, dispatching, and maintenance employees and supervisory employees with authority to hire, promote, discipline, discharge or otherwise effect changes in the status of employees, or effectively recommend such action.

WE WILL provide the 12 objecting financial core members named above, and all other objecting financial core members included in the bargaining unit described above, with an adequate explanation of the following expenditures, which the Union claims are for representational activities affecting your bargaining unit, described above:

administrative dues, payroll and expenses for officers and employees, and per capita tax for the following: International Brotherhood of Teamsters, Eastern Conference of Teamsters, Joint Council # 64, New England Bakery Committee, New England Freight Committee and Building Trades Council.

WE WILL provide the 12 objecting financial core members named above, and all other objecting core members included in the bargaining unit described above, with an explanation as to the expenses for political, legislative or lobbying activities, which the Union deems chargeable as representational activities on behalf of those members for the calendar years 1992 to the present.

WE WILL provide the 12 objecting financial core members named above, and all other objecting financial core members included in the bargaining unit described above, with verification that the information presented to them concerning the Union's expenditures for representational and nonrepresentational activities, for calendar years 1992 to the present, have been independently audited.

WE WILL provide the 12 objecting financial core members named above, and all other objecting financial core members included in the above-described collective-bargaining unit, with a recalculation of dues chargeable to them for calendar years 1992 to the present, which excludes all expenses associated with litigation of nonrepresentational activities, organizing and all other nonrepresentational expenditures, and includes only representational expenditures broken down on a unit-by-unit basis.

WE WILL, after recalculating the dues chargeable to them, make whole the 12 objecting financial core members named above, and all other objecting financial core members, in the above-described collective-bargaining unit, for any excess dues and fees they may have paid to the Union, since becoming, and notifying the Union that they were, objecting financial core members, by refunding the excess to them with interest.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 443, AFL–CIO